



STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

ENERGY

IN THE MATTER OF THE PETITION OF)
ATLANTIC CITY ELECTRIC COMPANY)
FOR APPROVAL OF A REQUEST FOR)
PROPOSALS, AUTHORIZATION OF A)
COMPETITIVE PROCUREMENT AND)
TO ENTER INTO A CONTRACT FOR)
BASIC GENERATION SERVICE SUPPLY)

DECISION & ORDER

DOCKET NO. EM00030156

(SERVICE LIST ATTACHED)

BY THE BOARD:

On March 14, 2000, Atlantic City Electric Company ("Atlantic" or "Company") filed a petition with the Board of Public Utilities ("Board" or "BPU") for (1) approval of a Request for Proposals ("RFP") for the purchase of capacity and energy for Basic Generation Service ("BGS"), (2) authorization to conduct a competitive procurement utilizing such RFP, and (3) authorization to enter into a BGS supply contract based on the results of such competitive procurement. The Company also requested that the Board render its decision in time to support Atlantic's need to procure BGS beginning on June 1, 2000.

BACKGROUND

The Board issued its Summary Order ("Summary Order") on July 15, 1999, In The Matter of Atlantic City Electric Company - Rate Unbundling, Stranded Cost and Restructuring Filings, Docket Nos. EO97070455, EO97070456, and EO97070457, adopting, with modifications, a Stipulation of Settlement ("Stipulation") entered into on June 9, 1999, by Atlantic and certain parties in the proceedings.

Paragraph 7 of the Stipulation states:

The Parties agree that Atlantic shall procure power for BGS through an open, competitive bidding process. During the first three years of the Transition Period, up to and including July 31, 2002, Atlantic plans to solicit proposals (the "RFP Process") for the provision of wholesale supply for BGS in twelve month pricing cycles, or such other cycles as Atlantic deems necessary or prudent. Atlantic will

submit its plans for the RFP Process to the BPU by September 15, 1999. Atlantic intends to commence the RFP Process as soon as practicable after such date and approval of the Plan by the BPU, with the goal of concluding such process and entering into a contract for BGS supply by December 15, 1999. Any agreements for the provision of BGS shall be presented to, and subject to the approval of the BPU. The Parties further agree that to the extent the Company has supply resources available from its Non-Utility Generator ("NUG") sources, the Company will apply such resources toward the BGS supply requirements and conduct the bidding process for the net BGS supply requirements resulting therefrom.

The Summary Order modified paragraph 7 of the Stipulation as follows:

Atlantic shall apply both NUG contract power and to-be-divested owned generation power (prior to the closure of the sale of the generation assets) toward the BGS supply requirement, which power shall be credited at the net BGS price (the floor shopping credit less transmission cost, sales and use tax, line losses, ancillary services and capacity reserve margin). Such credited prices shall be employed for purposes of establishing the level of the Net Non-Utility Generation Charge (NNC) and establishing the level of owned generation revenue requirement recovery (prior to the completion of divestiture), in accordance with this Order. Atlantic shall utilize and open competitive bidding process for BGS supply requirements net of NUG Power and Owned Generation (Pre-Divestiture). [sic]

By letter dated April 20, 2000, the Division of the Ratepayer Advocate ("Ratepayer Advocate") filed its position regarding Atlantic's Petition. The Ratepayer Advocate recommends that the Board find that:

1. Atlantic failed to comply with the terms of its own Stipulation and the Summary Order in regard to the RFP process for procuring BGS supply;
2. The Company's request for pre-approval of a BGS contract with unknown pricing terms is contrary to the terms of the Company's Stipulation, the Board's Summary Order, and section 9(a) of the Electric Discount and Energy Competition Act (EDECA), N.J.S.A. 48:3-57(b), and must therefore be denied;
3. The Company's request for pre-approval of rate recovery of the BGS contract, and any expenses incurred therein, is contrary to the Board's ratemaking jurisdiction and must therefore be denied;

4. Atlantic must present to the Board for its approval any BGS contract, pursuant to the terms of its Stipulation and the Board's Summary Order approving the Stipulation; expedited BPU (and Ratepayer Advocate) review and approval should be considered; and
5. A decision on the sale of Atlantic's nuclear generating assets should be deferred until after the peak summer months to ensure adequate supply at reasonable prices through the summer of 2000.

DISCUSSION AND FINDINGS

Atlantic anticipates a need for 300 megawatts (MW) of supply to meet its BGS load requirements effective June 1, 2000 regardless of any divestiture of its nuclear and fossil assets. A need for an additional 350 MW of supply is also anticipated by the Company if the sale of its nuclear generating units is approved by this Board. A petition seeking approval of this sale is pending before the Board (Docket No. EM99110870) with a proposed closing date of June 1, 2000. A petition for approval of agreements for the sale of the Company's fossil units is also pending before the Board (Docket No. EM00020106), with closing proposed for the early fall of 2000.

In its Petition, the Company submitted a draft RFP process proposal along with exhibits (proposed forms and purchase agreements) for the aforementioned 300 MW and 350 MW BGS supply needs. Board Staff and the Ratepayer Advocate propounded over 100 discovery requests on Atlantic, regarding the proposed RFP process and accompanying exhibit documents. During this process, the Company clarified its proposed RFP process, specifically through its responses to discovery requests prefixed S-ABGS- and numbered 1, 3, 4, 5, 7, 9, 11, 12, 14, 16, 19, 36, 37, 38, 40, 45, 47, 59, 62, 65 and 66. In addition, the Company submitted revised exhibits from Atlantic's counsel dated April 24, 2000.

Having reviewed this matter, the Board is not satisfied that Atlantic has demonstrated that its proposed RFP process warrants approval by the Board. In addition, the elapsed time between the completion of the RFP process and the issuance of the BGS contracts does not allow sufficient time for Board Staff and the Ratepayer Advocate to adequately and properly evaluate such issues as the appropriate duration of the supply contract or the reasonableness of Atlantic's determination of its supply needs. Moreover, the Board cannot ignore the fact that Atlantic has violated its commitment to file for Board approval of the RFP process by September 15, 1999, as set forth in its Stipulation and as approved in the Board's Summary Order. Atlantic does not now come before the Board with clean hands. Inasmuch as Atlantic has unilaterally opted to purchase capacity and energy in the open market without seeking some specific relief from its express commitment to the Board and other parties to use a structured competitive process, the Board **FINDS** the Company should bear the full burden of its actions and be at risk for the consequences thereof. We do not feel compelled to sanction the present ramifications and consequences of such indifference by Atlantic to what we consider to be legitimate good faith commitments that all parties had the right to rely upon.

However, the Board, recognizing Atlantic's need to procure BGS in order to provide continued safe, adequate and proper service to its customers, **HEREBY AUTHORIZES** Atlantic to proceed with its proposed RFP process as outlined in the Company's Petition and associated documents further clarified, modified, and revised as described above with the following modifications: The Board has concerns regarding Atlantic's proposal to request bids for the three peak summer months only, rather than a twelve-month pricing cycle. Therefore, the Board **ORDERS** Atlantic to modify its RFP to solicit bids for 300 MW of supply for both a three-month period and an alternative twelve-month period. In addition, the Board is deeply concerned with the impact that the Company's handling of this matter to date will have on its "Deferred Cost"¹ balance and ultimately on customers' rates. In this regard, upon receipt of the indicative bids, the Board **ORDERS** Atlantic to submit to the Board for its review, a copy of the indicative bid evaluation summary document as well as a calculation showing the impact that each indicative bid would have on its "Deferred Cost" balance if it were accepted. In addition, upon receipt of the final bids, the Board **ORDERS** Atlantic to submit to the Board for its review, a copy of the bid evaluation summary document as well as a calculation showing the impact that each final bid would have on its "Deferred Cost" balance if it were accepted. The Board reminds Petitioner that, as stated in the Summary Order, Atlantic has not been granted an "absolute right" to recover such costs and such costs are, and shall continue to be subject to Board review of the prudence and reasonableness of the Company's actions and the resultant costs. Furthermore, the Board **HEREBY AUTHORIZES** the use of this RFP process only for the procurement of the Company's asserted base load BGS requirement of 300 MW.

The Board will defer decision on the requested 350 MW RFP until such time as the Board makes its determination on the petition for approval of the sale of Atlantic's nuclear generating units. We emphasize that the Board is not making a finding at this time as to the reasonableness or prudence of the Company's proposed three (3) month term of the purchase contract for the 300 MW of BGS capacity and energy as compared to a contract with a term of twelve (12) months or longer, nor as to the Company's determination of the 300 MW BGS requirement. Also, the Board reserves its right to authorize the use of this specific RFP process or an alternative process to be determined by the Board for subsequent BGS needs.

The Company specifically requests that the Board issue an Order finding that the costs for energy and capacity under the contract(s) to be entered into under the RFP process are reasonable and prudent and are fully recoverable in rates. While, in order to ensure the provision of supplies to customers over the upcoming summer months, the Board is authorizing the plan and procedure for this instant RFP process as discussed above, the Board **FINDS** it inappropriate and thus will not pre-approve an unexecuted contract as prudent. The Board has a long held practice of "after the fact" supply purchase prudence reviews. The Company has not demonstrated why the Board should change this practice by pre-approving its contracts. Nothing in the EDECA prohibits the Board from continuing such post supply purchase prudence reviews or warrants such a change in policy. Atlantic must, as other energy utilities must, develop and maintain an expertise regarding purchasing strategies for its BGS

¹ Deferred Costs are described in the Stipulation (Paragraph # 27) and Summary Order (Pages 6-7) as those incurred during the Transition Period to meet the costs of BGS, the NNC, and the costs recoverable through the MTC.

service. Atlantic must justify any decisions it makes for obtaining energy and capacity for its BGS customers in an appropriate future ratemaking proceeding and show that they are prudent and reasonable. We find Atlantic's request to be particularly inappropriate in light of the timing of its filing, as discussed above. The Board, therefore, **DENIES** Atlantic's request for a pre-determination that its supply contracts for BGS service are prudent and reasonable.

This Order shall not affect nor in any way limit the exercise of the authority of this Board or of the State of New Jersey in any future proceeding with respect to rates, franchises, services, financing, accounting, capitalization, depreciation or any other matters affecting Petitioner.

Further, the Board **DIRECTS** that future requests for approval of any RFPs plans for the purchase of capacity and energy for Basic Generation Service shall be made at least sixty (60) days prior to the requested issuance of an RFP.

DATED: 5/15/00

**BOARD OF PUBLIC UTILITIES
BY:**

**SIGNED
HERBERT H. TATE
PRESIDENT**

**SIGNED
CARMEN J. ARMENTI
COMMISSIONER**

**SIGNED
FREDERICK F. BUTLER
COMMISSIONER**

**ATTEST: SIGNED
EDWARD D. BESLOW
ACTING SECRETARY**